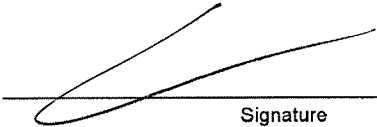


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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		006401.00371	
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	09/863,928	May 23, 2001	
	First Named Inventor		
	Wang		
	Art Unit	Examiner	
	1732	Monica A. Huson	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the			
<input type="checkbox"/>	applicant/inventor.	Signature	
<input type="checkbox"/>	assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Allen E. Hoover	
		Typed or printed name	
<input checked="" type="checkbox"/>	attorney or agent of record.	312-463-5000	
	Registration number 37,354	Telephone number	
<input type="checkbox"/>	attorney or agent acting under 37 CFR 1.34.	August 1, 2006	
	Registration number if acting under 37 CFR 1.34 _____	Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No. 006401.00371

In re: Wang et al.	)	
	)	
Application No. 09/863,928	)	Group Art Unit: 1732
	)	
Filed: May 23, 2001	)	Examiner: Monica A. Huson
	)	
For: COLD WATER SOLUBLE	)	
EXTRUDED STARCH PRODUCT	)	

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Applicants respectfully submit that the examiner's rejections are ill founded and should be withdrawn.

The principal reference is Nakatsuka, U.S. Patent 4,076,846. This reference teaches to prepare a starch/protein binary composition, which is said to be useful for the preparation of shaped molded articles. To arrive at the claimed invention, the Examiner relies on two secondary references, Altieri (U.S. Patent 5,849,23) and Redding (U.S. Patent 5,445,342).

For many reasons, Nakatsuka fails to disclose a cold-water soluble extruded starch. As an initial matter, with respect to solubility, although Nakatsuka undoubtedly discloses a product that is soluble to some extent, the extent of solubility of this product is not provided. The examiner points to Table 2 (column 13), but it is not clear that the solubility data there meets the limitations of the claims, to wit, a solubility greater than 90%. Additionally, at Column 10, lines 36-56, Nakatsuka specifies that the cold water solubility of the starch/protein composition can be reduced to various degrees by adding a coagulating agent, thereby suggesting that the solubility of the unmodified starch/protein composition is less than 100%.

More fundamentally, however, it is not clear whether the product of Nakatsuka is a starch at all. At column 6, lines 34-47, Nakatsuka characterizes the product as having "some degree of union" between the starch and the protein. What does this mean? Is the material of Nakatsuka a

modified starch? Is the material of Nakatsuka more in the nature of a protein? Or is the material of Nakatsuka some sort of hybrid? Nakatsuka does not say, and the reference is ambiguous on this point. For these reasons, the examiner has fails to establish that Nakatsuka discloses a starch. The rejection fails on this point alone.

Even if these deficiencies were somehow overlooked, the rejections would fail on other grounds. The claims (all but 39) specify that the starch is extruded in an extruder having at least two zones, the first zone being insufficient to gelantize the starch and the second zone being sufficient to gelantize the starch. Where are these teachings in Nakatsuka? These are not seen. The examiner points to column 8, column 13 and column 14, but these do not constitute any teaching or suggestion of these claimed conditions. Column 8 of Nakatsuka is silent to any conditions. Column 13 and 14 in Nakatsuka do provide certain reaction conditions, but Nakatsuka does not specify whether the starch is gelantized, or, if so, in which stage the starch is gelatinized. Of course, it is unclear whether Nakatsuka discloses a starch at all, so it is not even certain that the product of Nakatsuka is capable of gelatinization. In any event, the sequence of zones and the gelatinization in each zone is clearly absent. In claim 39, the step of “controlling” is not shown in Nakatsuka.

In the Advisory Action, the Examiner alternatively points to Altieri, a secondary reference, for teachings of reaction conditions. The Altieri reference teaches away from the claimed invention, in that it specifies a larger particle size than that provided by the claims. (Reference is made to the response filed January 20, 2006 for a more complete discussion). It is improper for the Examiner to ignore these contrary teachings in combining Nakatsuka with Altieri – the Examiner is not permitted to take the diverging teachings of two references and pick and choose features of interest to arrive at an obviousness rejection.

The rejection is improper for these reasons alone. Nonetheless, even if all of the foregoing defects could somehow be overlooked, the rejection is improper for yet additional reasons. In addition to Altieri, the examiner relies on a combination of Nakatsuka with Redding, another secondary reference (which is relied on for the claimed particle size distribution). This combination of reference is improper. Nakatsuka is concerned with providing a starch that is heavily modified, perhaps to the extent of the loss of the starch structure. Redding, on the other hand, teaches that chemical starch modification is undesirable (see column 2, line 39 et seq.). Redding indeed states as an object “to provide a cost effective and an energy efficient method of

physical modification of starch and other substrates without the necessity of chemical additives required by prior art processes.” Redding and Nakatsuka are therefore incompatible.

In the Advisory Action, the examiner (responding to this argument) points to various portions of columns 5-7 of Nakatsuka for the disclosure that unmodified starch may be used. The Examiner has failed to analyze the reference properly: The referenced passages of Nakatsuka merely teach that unmodified starch may be used as a *starting material*. The whole point of Nakatsuka is to modify this starting material by forming a starch/protein combination. Only then does Nakatsuka achieve a product with some measure of solubility. These teachings are antithetical to those of Redding, which desires to avoid starch modification.

Finally, with respect to claim 33, and those claims that depend therefrom, the rejection is particularly lacking in merit. Claim 33 specifies a process for preparing coated food product, the process including providing a *seasoning adherence solution* and applying it to a food substrate. Nakatsuka discloses no such seasoning adherence solution. The object of Nakatsuka is to provide a *packaging material*. The reference is clearly off the mark.

In response to this argument, the examiner states:

This [argument] is not persuasive because although Nakatsuka does not show permanent adhesive, he does disclose packaging food substrates with his seasoning article.

The Examiner’s position lacks merit. The subject claims specify applying a seasoning adherence solution in a manner effective to cause the seasoning in the solution to adhere to a food substrate. Where is this “solution” in Nakatsuka? Where is the adherence? No such solution or adherence is disclosed. The rejection of these claims is plainly improper and should be withdrawn.

Applicants appreciate the careful search of the Examiner, but the reasoning behind the claim rejections is fundamentally flawed, and the rejections cannot stand. Allowance is respectfully solicited.

Respectfully submitted,

Dated: August 1, 2006

By: \_\_\_\_\_

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